



Economic Impact Analysis Virginia Department of Planning and Budget

9 VAC 25-210-10 Virginia Water Protection Permit Regulation State Water Control Board November 18, 2005

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The State Water Control Board (the board) proposes to make substantive changes to the Virginia Water Protection Permit Regulations which deal with (1) the Coordinated Review of Water Resource Projects and (2) Emergency Virginia Water Protection Permits.

Major Changes Include:

1. A clarification of which water withdrawals are excluded from the permit requirement and under what conditions.
2. The institution of a new Pre-Application Panel for permit applicants requesting surface water supply permits.
3. The creation of a new public information meeting process and permit procedure for surface water projects which requires public notice..
4. The creation of an Emergency Virginia Water Protection Permit for public water supplies during drought.

5. The inclusion of new language regarding permit conditions for withdrawals in the Potomac River consistent with the Potomac Low Flow Allocation Agreement.

Estimated Economic Impact

The board proposes several amendments to the Virginia Water Protection Permit regulations which are designed to provide greater predictability for permit applicants, increased public involvement, increased flexibility for addressing public health and safety issues during drought, and a more efficient and understandable permit application, review, and issuance process for surface water supply projects.

The proposed amendments are expected to result in certain advantages to the public, to the regulated community, and to the Department of Environmental Quality (DEQ) and the Commonwealth of Virginia. The primary advantages to the public are the additional opportunities for involvement that will take place prior to the filing of the Virginia Water Protection Permit Application and the assurance that DEQ will review the cumulative effects of new withdrawals. The amended regulations will also create greater regulatory flexibility for addressing public safety issues with public water supplies during times of drought. The primary advantages to the regulated community relate to the improved clarity and predictability of the application process and the opportunity to identify potentially critical project issues through the Pre-Application Panel prior to submitting an application. The primary advantages to DEQ and the Commonwealth of Virginia relate to the increased comprehensiveness of the overall surface water management strategy which will result in applications being processed more quickly and predictably. Another important advantage to DEQ and the Commonwealth of the implementation of the proposed regulations will be that it will provide DEQ with a better understanding of the extent of water use that is excluded from the permit program.

The economic impact of each of the five major changes to the Virginia Water Protection Permit Regulations and the Coordinated Review of Water Resource Projects listed above will be analyzed below.

A clarification of which water withdrawals are excluded from the permit requirement and under what conditions. This change will not have a significant economic impact because it basically clarifies practices which are already in place and practiced by the board and only

applies to a relatively small number of permit holders. Currently, there are an estimated 490 surface water permit users in Virginia, but only 40 are required to get permits.

The institution of a new Pre-Application Panel and Public Information Meeting Process for surface water projects. This change provides for a Pre- Application Review Panel to be convened at the request of an applicant for a Virginia Water Protection Permit. The makeup of the panel will be state and federal agency staff. The applicant, if he requests a panel is required to provide for publication of notice and if requested by any person then must hold at least one public meeting at his own expense.

Another proposed amendment provides that the initial application for surface water projects that requires both a Virginia Water Protection Permit and a Virginia Marine Resources Permit shall be advertised concurrently by both agencies and paid for by the applicant.

A further proposed amendment provides that every draft Virginia Water Protection Permit application except emergency permits and variances shall provide for public notice paid for by the permit applicant. The intent of the agency (DEQ) in introducing the proposed amendments relating to the Pre-Application Review Panel and the public notice requirements for all permit applicants is to lessen the rejection of Virginia Water Protection Permits by reducing the objections and opposition ahead of time. Historically the rejection rate for permits has been quite low with only three rejections recorded since the early 1980's, out of approximately 120 permit applications. Traditionally, the differences between the involved parties has been negotiated to a favorable conclusion for permit issuance. In practice, this requirement to provide public notice for all permit applications may be significantly beneficial for affected members of the public who would not have heard about the permit applications. Neighboring residents and businesses can be potentially affected by excessive water withdrawals. The required public notice will increase the likelihood that such affected neighbors will become informed of the situation and provide their concerns to the board. Potentially, this may affect the likelihood of permit approval or disapproval or the nature of the permit.

The adoption of these proposed amendments will result in additional costs to permit applicants who otherwise would not have provided public notice. However, the public notice and public meeting requirement costs to applicants are not expected to be significant. For instance, DEQ estimates that the average cost of local public meetings is \$300. However, public meeting

costs can vary significantly based on meeting amenities, extent of public mailings, the provision of extensive fact sheets or posters, and the level of consultant participation. It should be pointed out that the public meeting costs are primarily controlled by the permit applicant who can choose the level of meeting amenities desired. Although the new public meeting requirement will increase the costs to permit applicants, it should be noted that currently, many permit applicants, estimated by DEQ to be more than half of all applicants conduct public information meetings as a routine part of their project development process. In addition, the number of applicants who hold public meetings in any given year is quite small, averaging only 4-6 applicants per year in recent years. As a result of these considerations it is expected that the adoption of the proposed regulations will not have a significant economic impact on applicants for surface water permits. However, although the intent of DEQ in introducing the proposed public notice requirements for all permits is to reduce permit rejections, it may result in additional objections from parties who may not have been aware of the certain permit applications without public notice.

Another amendment calls for the creation of an Emergency Virginia Water Protection Permit for public water supplies during drought. This change allows the board to grant a variance or modification to a Virginia Water Protection Permit during drought conditions by issuing an Emergency Virginia Water Protection Permit for public water supplies. The emergency permits were not previously in the board's regulations. The emergency cannot exceed one year in duration and the cost of the permit which is set by the General Assembly is half the cost of applicant's standard or general permit, which ranges from \$10,000 to \$35,000 based on withdrawal conditions. The intent of the proposed legislation to create an Emergency Virginia Water Protection Permit is to provide relief to surface water permit holders and their customers during drought conditions by allowing greater levels of water extraction. The emergency permit applies only to municipal water supply systems and would impact 4-5 water suppliers based on the experience in the most recent drought. The adoption of this regulation will provide relief to water suppliers and their customers and reduce the losses of both groups during drought conditions.

The inclusion of new language regarding permit conditions for withdrawals in the Potomac River consistent with the Potomac Low Flow Allocation Agreement. This section was enacted in response to a recent United States Supreme Court ruling to begin implementation of Virginia's responsibilities as a signatory to the Potomac Low Flow Allocation Agreement. Since 1978,

Virginia's responsibilities were carried out through Maryland permit programs. However, the Supreme Court decision changed this situation by holding that Virginia activities in the Potomac River did not require Maryland permits. This proposed regulation includes new language regarding permit conditions for withdrawals in the Potomac River consistent with the Potomac Low Flow Allocation Agreement.

This proposed regulation is expected to have minimal economic impact because it applies to only one small municipal water user in Leesburg, Virginia and does not significantly impact the user.

Businesses and Entities Affected

DEQ has only very preliminary estimates of the number of businesses and especially small businesses that would be affected by the proposed regulations. These estimates are based on existing water use data of those facilities reporting prior to 1990 and show as many as 150 commercial operations, 80 manufacturing operations, and 10 mining operations classified as small businesses that may be affected. However, some of these operations may be statutorily excluded users or may fall under the employment level or be above the gross annual sales level used to define small businesses. In addition, some of these businesses may also be eligible for the proposed general permit for surface water withdrawals which will reduce compliance costs.

Locality Particularly Affected

The proposed amendments do not disproportionately affect particular Virginia localities.

Projected Impact on Employment

Due to the small numbers of water users impacted by the proposed amendments there is expected to be only a minimal impact on employment. In addition two other factors serve to mitigate any adverse impact on employment levels that might result from the adoption of the proposed amendments. The first is the highly automated nature of the water withdrawal industry which requires very low levels of employment operate. The average employment level of water withdrawers in Virginia is 5 workers, including even the very largest water withdrawal operations. Historically, few if any if any of these withdrawal operations have gone out of business and very have suffered any significant losses. The second factor is the proposed

emergency permit, which if enacted, would serve to lessen any potential financial and employment losses by water suppliers and their customers during drought conditions.

Impact on the Use and Value of Private Property

The proposed regulatory amendments are expected to have only a minimal impact on the use and value of private property due to the small number of water users affected by the proposed amendments. However, private water permit applicants could be impacted by the costs of the proposed public notice.

Small Businesses: Costs and Other Effects

The DEQ has only very preliminary estimates of the number of small businesses that might be affected by the proposed amendments. However, it is expected that a number small businesses may be statutorily excluded users, or may not meet employment or annual sales requirements used to define small businesses. or may qualify for the proposed general permit for surface water withdrawal which will reduce the costs of compliance. However, small business water permit applicants could be impacted by the costs of the proposed public notice and public meeting requirements.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The amendments do not adversely affect small businesses based on currently available information.